

EXHIBIT K TO THE AFFIRMATION

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL, JUDGE

SUNNYSIDE DEVELOPMENT
COMPANY,

PLAINTIFF,

VS.

OPSYS, LTD.

DEFENDANT.

NO. C 05-553 MHP

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 16, 2007**TRANSCRIPT OF PROCEEDINGS****APPEARANCES:**

FOR PLAINTIFF:

BARTKO ZANKEL TARRANT & MILLER
900 FRONT STREET
SUITE 300
SAN FRANCISCO, CA 94111BY: **ROBERT H. BUNZEL**
ALYSON L. HUBER
BRIAN VILLAREAL
ATTORNEYS AT LAW

FOR DEFENDANT:

ORRICK HERRINGTON & SUTCLIFFE
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CA 94105BY: **JAMES E. BURNS, JR.**
JUSTIN MYER LICHTERMAN
ATTORNEYS AT LAW**(APPEARANCES CONTINUED ON FOLLOWING PAGE)**

REPORTED BY:

JAMES YEOMANS, CSR #4039, RPR
OFFICIAL REPORTER

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1 --

2 THE COURT: DON'T MENTION THAT.

3 MR. BUNZEL: AS MUCH AS I HATE TO SAY IT.

4 THE COURT: WE JUST WENT THROUGH THAT.

5 MR. BUNZEL: WE HAVE TO HAVE FURTHER PROCEEDINGS,
6 THEY'RE ALL EQUITABLE THEY DON'T REQUIRE A JURY, BUT THEY WILL
7 REQUIRE SOME EXPLANATION.

8 THE COURT: THAT'S EVEN WORSE.

9 MR. ERICSON: I'D LIKE TO RESPOND BRIEFLY TO A COUPLE
10 OF POINTS, I THINK, ARE MISAPPREHENSIONS REALLY.

11 FIRST OF ALL, TWO CHARACTERIZATION OF THE MAY 2005
12 TRANSACTIONS, THERE WAS, AT LEAST, AN INSINUATION AND MAYBE
13 MORE THIS WAS NEFARIOUS, IF NOT FRAUDULENT.

14 MR. BUNZEL: NOT WHAT I INTENDED.

15 MR. ERICSON: WELL, TALK ABOUT FRAUDULENT CONVEYANCE,
16 I HEARD THE WORD FRAUDULENT, BUT SOME INSINUATION THERE WAS
17 SOMETHING IMPROPER ABOUT THIS.

18 BUT LOOK AT WHAT HAPPENED. WE HAVE STOCK MOVING FROM
19 A NON-DEFENDANT TO A DEFENDANT, IS THAT THE WAY SOMEBODY MAKES
20 FRAUDULENT CONVEYANCE BY CONVEYING STOCK FROM A NON-PARTY TO A
21 DEFENDANT?

22 NO, OF COURSE NOT. IF SOMEBODY WISHES TO PUT
23 SOMETHING OUT OF CREDITORS' REACH THEY DON'T CONVEY IT TO
24 SOMEONE WHO'S A DEFENDANT IN THE CASE. THEY DO EXACTLY THE
25 OPPOSITE, THEY CONVEY IT TO SOMEBODY IN THE SUNNY PLACE FOR

1 SHADY PEOPLE OR SOMETHING LIKE THAT, BUT THEY DON'T CONVEY
2 THINGS TO A DEFENDANT, YET THAT'S WHAT HAPPENED HERE.

3 AS I EXPLAINED EARLIER, THE EQUITY IN AN OPSYS LIMITED
4 WENT TO CDT LIMITED, AT THE TIME IT WAS A DEFENDANT IN THIS
5 CASE. SO I MEAN, THE NOTION THAT THIS WAS SOMEHOW CREDITOR
6 AVOIDANCE OR DESIGNED TO PREJUDICE SUNNYSIDE OR ANY OTHER
7 CREDITOR JUST FLOUNDERS ON THE FACTS, THE CONVEYANCES EITHER
8 BETWEEN PARTIES IN THIS CASE OR FROM NON-PARTIES TO PARTIES IN
9 THIS CASE AND THERE JUST NO WAY THAT CAN BE TO THE PREJUDICE OF
10 ANY CREDITOR.

11 SECOND POINT I WANT TO MAKE, WITH RESPECT TO THE
12 NOTION, THE ANALOGY THREE-CARD MONTE WAS USED. THREE-CARD
13 MONTE IS, AS I UNDERSTAND IT, SOME SORT OF GAME, THINGS GET
14 HIDDEN AND SO ON, THERE'S NOTHING HIDDEN HERE.

15 THE MONEY THAT WAS USED OR THE CONSIDERATION FOR THE
16 TRANSACTIONS IN 2004, THE CDT, INC. STOCK THAT WAS GIVEN FOR
17 THE 2004 TRANSACTION, SOMETHING ON THE ORDER OF 800, 900 SHARES
18 OF CDT, INC. STOCK, WHICH IS WORTH OF A LOT OF MONEY THEN AND
19 UNFORTUNATELY QUITE A BIT LESS MONEY TODAY, MOST OF THAT IS
20 STILL IN THE ESCROW OR IN WHAT'S CALLED OPSYS MANAGEMENT, IS
21 SORT OF ESCROW.

22 IT'S NOT GONE TO THE FORMER SHAREHOLDERS OF OPSYS
23 LIMITED EXCEPT IN VERY SMALL AMOUNTS AND IN SATISFACTION OF
24 INDIVIDUAL CLAIMS THEY HAD. MOST OF IT IS STILL SITTING THERE
25 IN EITHER IN A FORMAL ESCROW OR IN SOMETHING THAT IS THE

1 EQUIVALENT OF AN ESCROW, THAT IS OPSYS MANAGEMENT STRUCTURE AND
2 IS AVAILABLE.

3 **THE COURT:** THAT CAN BE USED TO SATISFY ANY JUDGMENT
4 IN THIS CASE?

5 **MR. ERICSON:** I'M RELUCTANT TO SPEAK FOR ENTITIES I
6 DON'T REPRESENT THAT ARE, OBVIOUSLY, OF INTEREST SOMEWHAT
7 DIFFERENT THAN MY CLIENTS OWN INTEREST, SO I REALLY CANNOT
8 SPEAK DEFINITELY TO THAT.

9 BUT THE MONEY IS THERE, IT'S BASICALLY THERE FOR THE
10 SAKE OF CREDITORS. AND WHILE I CAN'T SAY WHETHER IT'S EASY OR
11 HARD OR SOMETHING, I DON'T KNOW THAT THERE'S ANYTHING THAT
12 PREVENTS MR. BUNZEL AND HIS CLIENT FROM LOOKING THROUGH OPSYS
13 MANAGEMENT.

14 AND THERE'S STILL SOMETHING ON THE ORDER OF, BETWEEN
15 THE ESCROW AND THE OPSYS MANAGEMENT, SOMETHING IN THE ORDER OF
16 700,000 SHARES OF CDT, INC. STOCK. UNFORTUNATELY NOT WORTH
17 WHAT IT ONCE WAS.

18 IT'S SITTING IN SORT OF ESCROW, SORT OF QUASI ESCROWS,
19 BASICALLY SITTING THERE BECAUSE OF CREDITOR CLAIMS AND THE
20 LIKE, NOT BEEN DISTRIBUTED TO THE FORMER SHAREHOLDERS OF OPSYS
21 LIMITED. I THINK, THAT'S REALLY WHERE THE PLAINTIFF OUGHT TO
22 BE LOOKING AND THAT WHAT THEY'RE ATTEMPTING TO DO HERE.

23 WHAT PLAINTIFF IS ATTEMPTING TO DO HERE IS SOMETHING
24 THAT JUST CANNOT BE FIT WITHIN ANY OF THESE DOCTRINES THEY
25 MENTIONED.

1 **MR. ERICSON:** VERY QUICKLY ON THAT. I DON'T THINK
2 THERE'S ANY THEORY THAT CDT UNDERPAID. IT PAID AN AMOUNT, THAT
3 BOOK SHOW TO BE VASTLY IN EXCESS OF BOOK VALUE OF THAT WHICH IT
4 GOT WAS TREMENDOUS AMOUNT OF GOOD WILL THAT WAS PUT ON THE
5 BOOKS BECAUSE THE PRICE PAID FOR THESE ENTITIES WAS AT LEAST
6 DOUBLE THEIR BOOK VALUE.

7 AND THE RULE HE SUGGESTING IS, I THINK, FOR THE
8 REASONS YOUR HONOR MENTIONED, JUST COMPLETELY WRONG. THE IDEA
9 THAT YOU CAN'T BUY SOMETHING FROM, YOU CAN'T BUY A CORPORATION
10 OR YOU CAN'T BUY SOMETHING FROM A CORPORATION UNLESS YOU PAY AN
11 AMOUNT SUFFICIENT TO COVER ALL THEIR LIABILITIES, THERE'S NO
12 BASIS IN LAW FOR THAT SORT OF ARGUMENT.

13 YOU CAN'T UNDERPAY FOR THE ASSETS, THERE'S NO RULE OF
14 LAW YOU HAVE TO BE DADDY WARBUCKS AND PAYOFF ALL THEIR OTHER
15 CREDITORS TO APPLY SOMETHING FROM LIMITED.

16 YOUR HONOR PUT YOUR FINGER ON IT, THE ONLY REAL ISSUE
17 YOU MAKE YOUR CREDITORS WORSE OFF. THERE'S NO WAY CDT MADE
18 OPSYS CREDITORS WORSE OFF BY PUTTING MONEY INTO OPSYS, BY
19 PUTTING A LOT OF CDT STOCK WHICH IS VALUE IN THERE. AND AS I
20 SAID, ALMOST ALL THE CDT STOCK IS STILL SITTING THERE IN ESCROW
21 OR IN OPSYS MANAGEMENT, IT'S NOT GONE WITH THE WIND OR
22 DISAPPEARED OR ANYTHING.

23 **THE COURT:** IS THERE ENOUGH TO COVER THE JUDGMENT IN
24 THE CASE?

25 **MR. ERICSON:** IF THE CURRENT STOCK PRICE, I DON'T

1 THINK THERE IS. I THINK, REASON SIGNIFICANT PART OF IT, I
2 THINK THE CURRENT PRICE OF CDT STOCK, I DON'T THINK SO. I
3 THINK WHAT I SAID EARLIER ON THE ORDER OF 700,000 SHARES, I
4 HAVEN'T CHECKED THE STOCK PRICE IN THE LAST FEW DAYS, BUT I
5 THINK IT WAS FIVE OR SOMETHING LIKE THAT LAST TIME I LOOKED.
6 SO THAT WOULD BE 3 1/2 NOT 4.8, BUT THERE ARE OBVIOUSLY OTHER
7 CLAIMANTS INCLUDING EASTMAN KODAK AS IDENTIFIED IN OUR PAPERS.

8 THE POINT THIS IS NOT SOME SORT OF STRUCTURE WHERE
9 SOME PEOPLE STUCK THE MONEY IN THEIR POCKET AND SNUCK OFF IN
10 THE DARK OF NIGHT, IT'S A CONSIDERATION PAID IN FOR THESE
11 ENTITIES IS STILL SITTING THERE IN THESE ESCROWS.

12 BUT, AGAIN, I JUST THINK THERE IS NO CREDIBLE THEORY
13 ADVANCED THAT CONSIDERATION OF WHAT WERE VERY MUCH ARMS-LENGTH
14 TRANSACTIONS, HEAVILY DOCUMENTED, HEAVILY NEGOTIATED, GOOD LAW
15 FIRMS ON BOTH SIDES AND SO ON, ON ALL RESPECTS ARMS-LENGTH, NO
16 CREDIBLE THEORY OR CREDIBLE EVIDENCE THE CONSIDERATION PAID FOR
17 ANYTHING WAS INADEQUATE BY ANY TEST.

18 **THE COURT:** NOW, WERE IT NOT FOR THE EARLIER DISMISSAL
19 WITH RESPECT TO CDT LIMITED, WOULD THERE BE BASIS FOR PURSUING
20 CDT LIMITED?

21 **MR. BUNZEL:** YOUR HONOR, MY READING OF DISMISSAL WITH
22 PREJUDICE.

23 **THE COURT:** WERE IT NOT FOR THAT. IS THERE SOME
24 THEORY?

25 **MR. BUNZEL:** I THINK, GIVEN THE PRESENTATION, AS I